

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, and Russ Dixon, individually and as representatives of a class of similarly situated persons, and on behalf of the M&T Bank Corporation Retirement Savings Plan,

Plaintiffs,

v.

Case No. 1:16-cv-375-FPG

M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Janet Coletti, Michele Trolli, Mark Czarnecki, Stephen Braunscheidel, Brian Hickey, Darren King, Kevin Pearson, Michael Spsychala, Brent O. Baird, C. Angela Bontempo, Robert T. Brady, T. Jefferson Cunningham III, Gary N. Geisel, John D. Hawks, Jr., Patrick W.E. Hodgson, Richard G. King, Melinda R. Rich, Robert E. Sadler, Jr., Herbert L. Washington, Robert G. Wilmers, Robert J. Bennett, Michael D. Buckley, Jorge Pereira, Colin E. Doherty, Denis J. Salamon, Newton P.S. Merrill, and John Does 1–20,

Defendants.

**NOTICE OF DEFENDANTS' MOTION TO DISMISS
THE CLASS ACTION COMPLAINT**

PLEASE TAKE NOTICE that upon Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Class Action Complaint ("Memorandum"), the accompanying Declaration of M. David Possick with exhibits, and upon all prior pleadings and proceedings herein, Defendants M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Inc., Wilmington Funds Management Corporation, Wilmington Trust Corporation, Janet Coletti,

Michele Trolli, Mark Czarnecki, Stephen Braunscheidel, Brian Hickey, Darren King, Kevin Pearson, Michael Spychala, Brent O. Baird, C. Angela Bontempo, Robert T. Brady, T. Jefferson Cunningham III, Gary N. Geisel, John D. Hawks, Jr., Patrick W.E. Hodgson, Richard G. King, Melinda R. Rich, Robert E. Sadler, Jr., Herbert L. Washington, Robert G. Wilmers, Robert J. Bennett, Michael D. Buckley, Jorge Pereira, Colin E. Doherty, Denis J. Salamon, and Newton P.S. Merrill (“Defendants”) hereby move this Court before the Honorable Frank P. Geraci, Jr., Chief United States District Judge, at the United States Courthouse, 100 State Street, Rochester, New York, for an Order dismissing the Class Action Complaint in significant part with prejudice and without leave to replead for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for each of the following grounds: (a) Count I fails to state a claim as a matter of law with respect to Plaintiffs’ Retail Shares Claim and Mutual Fund Alternatives Claim (as those terms are defined in the accompanying Memorandum); (b) Count I also fails to state a claim as a matter of law with respect to Plaintiffs’ Proprietary Funds Claim (as that term is defined in the accompanying Memorandum) to the extent that claim is based on alleged conduct that occurred before May 11, 2013 under the three-year statute of limitations under the Employee Retirement Income Security Act of 1974 (“ERISA”); (c) Counts II and III fail to state a claim against all Defendants; and (d) Defendants Wilmington Trust Investment Advisors, Inc., Wilmington Funds Management Corporation and Manufacturers and Traders Trust Company should be dismissed in any event because those Defendants were not fiduciaries of the Plan under ERISA. Defendants also seek an Order granting such other and further relief as the Court deems just and proper.¹

¹ Pursuant to Local Rule 7(a), Defendants state that they intend to file and serve reply papers on August 31, 2016 as agreed upon by the parties in a June 30, 2016 stipulation that this Court so ordered on July 11, 2016. (ECF No. 15.)

Dated: July 20, 2016
New York, New York

SULLIVAN & CROMWELL LLP

/s/Richard C. Pepperman, II

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I, M. David Possick, hereby certify that copies of:

the Notice of Defendants' Motion to Dismiss the Class Action Complaint;

Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Class Action Complaint; and

the Declaration of M. David Possick in Support of Defendants' Motion to Dismiss the Class Action Complaint and the exhibits thereto

were filed on July 20, 2016 with the Clerk of the District Court using its CM/ECF system, which will send copies electronically to all counsel that have appeared in this action and registered with such system.

Dated: New York, New York
July 20, 2016

/s/ M. David Possick
M. David Possick